BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	
ARKANSAS CABLE TELECOMMUNICATIONS ASSOCIATION; COMCAST OF ARKANSAS, INC.; BUFORD COMMUNICATIONS I, L.P. d/b/a ALLIANCE COMMUNICATIONS NETWORK; WEHCO VIDEO, INC.; and TCA CABLE PARTNERS d/b/a COX COMMUNICATIONS,	EB Docket No. 06-53
Complainants,	EB-05-MD-004
v.	
ENTERGY ARKANSAS, INC.,	
Respondent.	

To: Honorable Arthur I. Steinberg
Administrative Law Judge

RESPONSE TO ENTERGY'S REPLY IN SUPPORT OF ITS MOTION TO ENLARGE, CHANGE AND DELETE ISSUES IN THE HEARING DESIGNATION ORDER

Complainants Arkansas Cable Telecommunications Association, Comcast of Arkansas, Inc., Buford Communications I, L.P. d/b/a/ Alliance Communications Network; WEHCO Video, Inc. and TCA Cable Partners d/b/a Cox Communications ("Complainants") respectfully submit this Response to Respondent's Reply in support of its Motion to Enlarge, Change and Delete Issues

In The Hearing Designation Order (HDO) filed by Respondent Entergy Arkansas, Inc. ("Entergy" or "EAI") on May 4, 2006.

I. THE SUGGESTED REVISIONS WOULD PREJUDICE COMPLAINANTS' ABILITY TO MAKE THEIR CASE

For the reasons set forth in their Opposition, including the fact that the parties stipulated to these issues, Complainants continue to believe that the Bureau's HDO properly designated issue 4(c) for hearing and that it is not in need of revision. 1/ In fact, Complainants believe that any attempt to alter this issue will prejudice its ability to obtain proper resolution of the issues in its Complaint and is contrary to the overwhelming precedent in their opposition that HDOs must be left intact.

Complainants oppose the revision the Bureau proposed in its Opposition, filed May 15, 2006 for one (perhaps) unintended effect that the Bureau's revision would have if adopted. The Bureau seeks to limit the inquiry to poles to which Complainants are already attached. However, Complainants dispute extends also to those poles to which they seek to attach. For example, in some cases Entergy has installed its own facilities out of compliance and requires Complainants to make corrections to pre-existing violations as a condition of access. *See* Billingsley Reply Declaration ¶¶ 26-27, 46, 53-54.2/ Furthermore, some of the payment and corrections Entergy seeks may be to address electric violations on

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1/ Complainants hereby reference and fully incorporate their Opposition to Entergy's Motion to Enlarge, Change and Delete Issues Presented In the HDO.

2/ Attached to Reply filed June 10, 2005.

poles to which Complainants are not even attached. This is as unjust and unreasonable as requiring Complainants to correct violations where they are already attached.

Complainants also oppose the brand new revisions that Entergy seeks for the first time in its reply, marking a fundamental change in its original position taken in its Motion. Despite Entergy's insistence to the contrary, the new revisions would change the entire nature of the case as stated in the HDO. Restricting Issue 4(c) merely to those poles as to which Entergy has previously cited the Complainants for violations would effectively eliminate an entire class of challenged conduct involved in this dispute, as the Bureau originally designated it for hearing. Commission precedent and the circumstances of this case warrant leaving the HDO undisturbed.

First, as with the Bureau's revisions, Entergy's revisions narrow the issue too far, excluding those claims Complainants have made about Entergy's requiring correction of pre-existing violations, at Complainants' expense, as a condition of access. It is not reasonable to exclude these issues at this point in the parties' litigation. *See* page 2, *supra*.

Second, Entergy's revision assumes that Entergy's unjust and unreasonable conduct is limited to cases where it has found Complainants' facilities to be in violation of its purported standards. It is not; and the Complaints' various pleadings make this clear. *See, e.g.,* Reply (filed June 10, 2005) at 22. Whereas Entergy has cited violations in a great deal of the examples Complainants raise in

their pleadings, it has not always, or even consistently, done so. In other situations, Entergy could just as easily require Complainants to pay the costs of correcting violations without formally issuing a violation citation to Complainants. In fact, there are instances where Entergy refuses to allow Complainants to attach, even where it has not issued a citation against Complainants. *See* Billingsley Reply Decl. ¶¶ 26-27.

Third, Issue 4(c) assumes that the only objectionable violations Entergy creates with its own facilities are ones that put Complainants into violation. This is not always the case. In some cases it may be that Entergy's facilities put another non-Complainant attacher into violation, but that Complainants, as a condition of new or continued access, are forced to bear the costs of correcting the violation. Or, in others, it is Entergy's facilities that are causing the violation, irrespective of the Complainants' facilities, yet Entergy still requires Complainants to pay for corrections. *See, e.g.,* Declaration of Bennett Hooks ¶ 25, attached to Complaint, filed Feb. 18, 2005 (with or without Complainants' attachments, Entergy's facilities would nonetheless be in violation).

Fourth, the question of what constitutes a "violation" is itself a component of this dispute, as is the question of whether the Complainants – rather than Entergy or other attachers – are responsible for the violation. *See, e.g.,* Reply (filed June 10, 2005) at 51-52; Billingsley Reply Declaration ¶ 23. Conditioning Complainants' relief on a showing that Entergy has cited a particular complainant in a particular instance for a "violation" or concluded that its facilities are "in

violation" has the potential to open new issues in this litigation far beyond the scope of the Bureau's HDO. Indeed, Entergy's proposal operates to put an additional burden on Complainants to show that they are entitled to relief.

Finally, Entergy's revisions effectively undercut Complainants' ability to present its discrimination claims. A key part of Complainants' case has and will be that Entergy regularly builds its facilities out of compliance and causes violations with its own facilities as well as Complainants' or other third-party attachers', *but does not cite them as violations. See, e.g.,* Reply (filed June 10, 2005) at 26-27, 38-39, 54-56. This was also a very significant part of the showing in Complainants' opposition to Entergy's motion. A large part of Complainants' case will be showing that Entergy's conduct is unjust and unreasonable based on the differential treatment Entergy grants to different attachers.

Ultimately, Complainants remain concerned that, if Issue 4(c) is revised at all – both to the extent that Entergy advocates, and even the more modest but overly restrictive staff revision – an important aspect of the relief they seek – and which this Commission is obliged to hear – will go unaddressed. Under these circumstances, a real danger exists that, upon final resolution of this case, the parties' whole dispute will not be resolved, leaving open the possibility of future complaints over these same issues. The Bureau got it right the first time and the HDO should remain undisturbed.

II. ISSUE 4(C), AS ORIGINALLY WRITTEN, DOES NOT CREATE A JURISDICTIONAL CONFLICT

What the Bureau proposes does not – as Entergy alleges at page 3 of its Reply – require the Commission to make determinations related wholly to electric facilities. It simply requires the Commission to determine whether Entergy's terms and conditions are applied justly and reasonably to Complainants as required by the Pole Attachment act.

Moreover, as the Bureau has once again explained in its Opposition, there is no jurisdictional tension between Issue 4(c) – as originally drafted or as amended by the Bureau – and Commission jurisdiction under the Pole Attachment Act. *Id.* Even if there were such tension, Entergy's Motion to Enlarge, Change and Delete is an inappropriate vehicle for relieving it. *See* Complainants' Opposition.

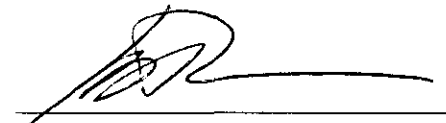
Finally, these exact same issues – *i.e.*, whether and to what extent Issue 4(c) exceeds the Commission's jurisdiction – are currently pending with the Commission in the form of Entergy's Application for Review, filed on May 19, 2006. By raising these issue simultaneously on a dual track, Entergy essentially requests both the Presiding Officer and the Commission to decide the same, albeit differently phrased, issues. The potential for conflicting results is real. As a result, the most appropriate and sensible resolution of Entergy's Motion would be to deny it, with prejudice, in deference to the Commission's consideration of the Application for Review now pending before it.

III. CONCLUSION

For the foregoing reasons, Entergy's Motion should be denied and Issue 4(c) of the Bureau's Hearing Designation Order should remain unchanged.

Respectfully Submitted,

ARKANSAS CABLE TELECOMMUNICATIONS ASSOCIATION; COMCAST OF ARKANSAS, INC.; BUFORD COMMUNICATIONS I, L.P. D/B/A ALLIANCE COMMUNICATIONS NETWORK; WEHCO VIDEO, INC.; TCA CABLE PARTNERS D/B/A COX COMMUNICATIONS



J. D. Thomas
Paul A. Werner III
HOGAN & HARTSON L.L.P.
Columbia Square
555 Thirteenth Street, NW
Washington, DC 20004-1109
Telephone: (202) 637-5600
Facsimile: (202) 637-5910
jdthomas@hhlaw.com
pawerner@hhlaw.com

Genevieve D. Sapir
HOGAN & HARTSON L.L.P.
1999 Avenue of the Stars
Los Angeles, California 90067
Telephone: (310) 785-4600
Facsimile: (310) 785-4601
gdsapir@hhlaw.com

May 25, 2006

Its Attorneys

CERTIFICATE OF SERVICE

I, Christine Reilly, hereby certify that on this 25th day of May, 2006, I have had hand-delivered, and/or placed in the United States mail, and/or sent via electronic mail, a copy or copies of the foregoing **RESPONSE TO ENTERGY'S REPLY IN SUPPORT OF ITS MOTION TO ENLARGE, CHANGE AND DELETE ISSUES IN THE HEARING DESIGNATION ORDER** with sufficient postage (*where necessary*) affixed thereto, upon the following:

Marlene H. Dortch ***(Orig. & 6 copies)*** *
Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TW-A325
Washington, D.C. 20554

Hon. Arthur I. Steinberg **
Administrative Law Judge
Office of the Administrative Law Judge
Federal Communications Commission
445 Twelfth Street, S. W.
Washington, D. C. 20554

Shirley S. Fujimoto, Esquire **
Erika E. Olsen, Esquire
McDermott Will and Emery LLP
600 Thirteenth Street, N.W.
Washington, D.C. 20005

Wm. Webster Darling, Esquire (overnight delivery) **
Entergy Services, Inc.
425 W. Capitol Avenue
P.O. Box 551
Little Rock, Arkansas 72203

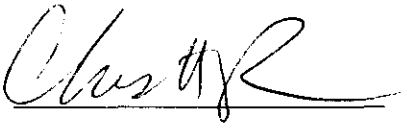
Gordon S. Rather, Jr. (overnight) **
Michelle M. Kaemmerling
WRIGHT, LINDSEY & JENNINGS LLP
200 West Capitol Avenue
Suite 2300
Little Rock, AR 72201-3699

Kris Monteith **
Alex Starr
Lisa Saks
Michael Engel
Federal Communications Commission
Enforcement Bureau
Market Disputes Division
445 Twelfth Street, S. W.
Washington, D. C. 20554

Best Copy and Printing, Inc. *
Federal Communications Commission
Room CY-B402
445 12th Street, SW
Washington, D.C. 20554

Federal Energy Regulatory Commission *
888 First Street, NW
Washington, D.C. 20426

Arkansas Public Service Commission *
1000 Center Street
Little Rock, AR 72201



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